

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3790 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

ATULKUMAR SHASHIKANT JAISWAL

VS

THE STATE OF GUJARAT & OTHERS

Appearance:

MS. MEGHA JANI for the petitioner.

MR. NIGAM SHUKLA, Addl. G.P. for the respondentns.

CORAM : MR.JUSTICE M.R.CALLA

Date of decision: 30/10/96

ORAL JUDGEMENT

This Special Civil Application is directed against the petitioner's detention order dated 26.4.1996 passed by the District Magistrate, Baroda, whereby the petitioner has been detained under the provisions of the Gujarat Prevention of Anti-Social Activities Act, 1985. The detention order was executed on 26.4.1996 and since then the petitioner is under

detention lodged at Bhavnagar Jail, Bhavnagar.

The present Special Civil Application was filed on 23.5.1996 and on 24.5.1996 rule was issued. So far neither any reply has been filed nor affidavit of the detaining authority has been filed.

The grounds of detention enclosed with the detention order dated 26.4.1996 (a xerox copy of which has been produced today by the learned counsel for the petitioner under covering letter dated 30.10.1996 to be kept on record) show that the petitioner was engaged in the unauthorised business of foreign and country liquor in the town of Jethpur-Pavi and the area surrounding it where such liquor is being sold out by the petitioner. It has also been mentioned that the petitioner was involving the minor boys in his business and he is leading a gang for the purpose of stock and sale of the liquor, has created terror to such an extent that no one is prepared to come and make a report against the petitioner. The detaining authority has mentioned that the petitioner was a headstrong person with revengeful attitude and used to keep two/three body guards and used to beat on minor issues and has created an atmosphere of terror and had become a problem to the public order. It has also been mentioned by the detaining authority that despite the raids of the petitioner's addas he had not stopped anti-social activities. On the contrary, he has been trying to win over the witnesses in the cases which are filed against him and he has also been involved in the misbehaviour with the girls. Reference has also been made to five criminal cases registered at Jethpur-Pavi police station for offences under the Bombay Prohibition Act as also the offences under the I.P.C. and Motor Car Proceedings under Section 110-G of the Criminal Procedure Code. Besides this, the statement of two witnesses against the petitioner's anti-social activities have also been considered and since the witnesses were frightened and afraid of the petitioner, their identity has been kept secret. The detaining authority has mentioned that the petitioner was involved in a large number of cases under Bombay Prohibition Act and while making references to the previous lattakhand, the detaining authority has mentioned that the petitioner has no record for the law and there is no alternative except to detain the petitioner, looking to the fact that he was a bootlegger and headstrong person.

The detention order has been challenged on more than one grounds but at the time of arguments the learned

counsel kept his arguments confined to the question that the allegations and the material relied upon by the detaining authority against the petitioner did not constitute a case of breach of public order and at the most it could be said to be a case of breach of law and order only.

I have considered the submissions made on behalf of both the sides. In view of the reasons given in the decision dated 4.10.1996 of this court rendered in Special Civil Application No. 3879 of 1996, the allegations and material as have been relied upon in the instant case even if taken to be true cannot be said to constitute a case of breach of public order. It is at the most a case of breach of law and order for which ground the detention order could not be passed. The case is fully covered by the decision dated 4.10.1996 mentioned above and the impugned order cannot be sustained in the eye of law.

Accordingly the Special Civil Application is allowed and the impugned detention order dated 26.4.1996 passed by the District Magistrate, Baroda, is hereby quashed and set aside and the petitioner's detention is declared to be illegal. The respondents are directed to release the petitioner and set him at liberty forthwith if not required in any other case. Rule is made absolute.

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